

CONSULTATION PAPER

P012 - 2016

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Review of MAS 105 on Insurers' Appointment of Custodians and Fund Managers

MAS

Monetary Authority of Singapore

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1 Preface

1.1 Currently, MAS 105 Appointment of Custodian and Fund Manager (“MAS 105” or “Notice”) sets out the mandatory requirement and non-mandatory best practice standards for insurers’ appointment of overseas custodians and fund managers. In July 2016, MAS issued a consultation paper on Enhancements to Regulatory Requirements on Protection of Customer’s Moneys and Assets that will be applied on capital market licencees in Singapore.

1.2 MAS is now proposing to enhance the requirements for safeguarding assets of insurance funds when insurers appoint custodians and sub-custodians¹ to hold such assets. The revised scope of MAS 105 will be broadened to cover all custodians and sub-custodians, local and overseas. MAS also intends to refine and streamline the information collected on custodian arrangements. These proposals are set out in this consultation paper and are intended to be effected via revisions to MAS 105 and MAS 122 Notice Asset & Liability Exposures for Insurers (“MAS 122”), when finalised.

1.3 MAS invites interested parties to submit their views and comments on the proposals made in this paper.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

¹ Sub-custodians may be the custodian’s affiliates, subsidiaries, branches or unrelated parties.

1.4 Please submit written comments by 9 Dec 2016 to –

Insurance Department
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117
Fax: (65) 6229 9694
Email: Notice105@mas.gov.sg

1.5 Electronic submission is encouraged. We would appreciate that you use this suggested format [here](#) for your submission to ease our collation efforts.

2 Appointment and Ongoing Monitoring of Custodians and Sub-custodians

Mandatory Requirement for the Appointment of Custodians and Sub-custodians

2.1 As insurers increase their overseas investments, their custodian arrangements tend to become more complex. This is because their main custodians may delegate their safekeeping function to one or more sub-custodians that may not be from the same group as the main custodian. Alternatively, insurers may appoint their own overseas custodians. To enhance the protection of insurers' assets, MAS proposes to include a mandatory requirement for insurers to appoint only custodians and sub-custodians that are licensed, registered or authorised to act as custodians in the jurisdiction where the custody account is maintained. Regulated custodians and sub-custodians are subject to detailed rules on the identification and safeguarding of customers' moneys and assets, and supervision of their activities.

Question 1. MAS seeks comments on the mandatory requirement for insurers to ensure that all their custodians and sub-custodians are licensed, registered, or authorised to act as custodians in the jurisdiction where the custody account is maintained.

Guidelines on the Appointment and Ongoing Monitoring of Custodians and Sub-custodians

2.2 Currently, MAS 105 expects an insurer to consider the custodian's practices, procedures, internal controls, financial strength, general reputation and standing prior to appointing an overseas custodian. The overseas custodian should also have a financial strength rating of at least investment grade by a reputable credit rating agency. Where the candidate does not meet the financial strength benchmark, the insurer should exercise added care and prudence in assessing the quality of the candidate to ensure safe custody of its assets. MAS proposes to set these as guidelines and extend them to the appointment of all custodians, both local and overseas, for consistency.

2.3 MAS also proposes to include additional standards on the appointment and ongoing monitoring of custodians and sub-custodians in the guidelines. These standards will enable the insurers to understand the risks relating to their access to or recovery of their assets if the custodian's operations are disrupted or ceased suddenly; and to monitor the custodians and sub-custodians regularly for heightened risks, with sufficient details for the insurers to identify and promptly recover their assets in the event of a disruption or cessation of the custodian's business.

2.4 The proposed standards are set out below:

- (a) Before appointing any custodian, an insurer should consider the custodian's business continuity plans with its own contingency arrangements for asset recovery, in the event of disruption or cessation of the custodian's operations;
- (b) An insurer should reassess the custodian on a regular basis or when it is aware of any material change, to ensure that the internal controls for safeguarding the insurer's assets are adequate and effective;
- (c) If an insurer's custodian has appointed sub-custodians to safeguard the insurer's assets, the insurer should ensure that the custodian's process of selecting, monitoring and reviewing its sub-custodians remain effective and satisfactory throughout the duration of appointment; and
- (d) An insurer should maintain a complete list of all its custodians and sub-custodians appointed to safeguard the insurer's assets, and update the list for any subsequent appointments or removals. The list should include a breakdown of the amount of individual assets held by each custodian and sub-custodian for each insurance fund, and should be updated on a regular basis or when there is a material change.

2.5 Please refer to **Annex 1** for the list of the mandatory requirements and guidelines setting out standards relating to the insurers' appointment and ongoing monitoring of custodians and sub-custodians.

Question 2. MAS seeks comments on the proposal to extend the current standard for insurers' appointment of overseas custodians to the appointment of local custodians.

Question 3. MAS seeks comments on the guidelines for insurers' appointment and ongoing monitoring of custodians and sub-custodians detailed in paragraph 2.4.

3 Provisions to be Included in a Custodian Agreement

3.1 An insurer should set out clearly the roles and responsibilities of the insurer, custodian and sub-custodian, as well as the risks borne by each party in a written agreement between the insurer and the custodian ("the custodian agreement"). The insurer should exercise due care in drafting and reviewing the contractual provisions within the custodian agreement to ensure safe custody of its insurance fund assets. In particular, insurers should pay attention to any provisions in the custodian agreement that exclude the custodian's or sub-custodian's liability.

Mandatory Requirements on the Provisions of a Custodian Agreement

3.2 MAS recognises that certain provisions are essential in enhancing safe custody of insurance fund assets, and that these should be included as mandatory provisions in the custodian agreement. At the minimum, MAS expects all insurers to include the following mandatory provisions in their custodian agreement:

- (a) The title of the custodian account should be maintained in the name of the insurer licensed in Singapore, and the custodian and sub-custodian should identify the assets as belonging to the respective insurance fund established by the insurer under section 17(1) of the Insurance Act, either through sub-accounts or otherwise.
- (b) The insurer's assets should be kept separate from any other assets belonging to the custodian, sub-custodian or other clients of the custodian and sub-custodian;
- (c) The circumstances in which the custodian or sub-custodian may withdraw assets from the account should be limited and clearly specified. Further, the custodian or sub-custodian should be prohibited from taking a charge, mortgage, lien or other encumbrance over, or in relation to, assets of the insurer, unless otherwise agreed upon in writing;
- (d) The extent of the custodian's liability in the event of any loss of assets maintained with the custodian caused by fraud, wilful default or negligence on the part of the custodian, its sub-custodians, or its agents; and
- (e) Any material or systemic breach of the agreement should be brought to the insurer's attention as soon as possible.

Question 4. MAS seeks comments on the proposed mandatory provisions that insurers must include in their custodian agreement.

Question 5. MAS seeks comments on whether there are specific situations where these provisions cannot be included.

Question 6. MAS seeks suggestions on whether there are other mandatory provisions that insurers should include in their custodian agreement to ensure safe custody of insurance fund assets.

Guidelines on the Provisions of a Custodian Agreement

3.3 In addition to the mandatory provisions set out in paragraph 3.2, insurers should include the following provisions in their custodian agreement:

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- (a) In the event that an insurer suffers a loss due to acts or omissions that the custodian is liable for, or for which the custodian accepts liability, the right of the insurer to recover from the custodian is not dependent upon the right of the custodian to recover from any of its sub-custodians or its agents; and
 - (b) Prior to placing an insurer's assets with a sub-custodian, the custodian will provide the insurer with a written notice of the identity of the sub-custodian with which the assets of the insurer are intended to be placed.

3.4 Please refer to **Annex 2** for the list of the mandatory requirements and guidelines setting out standards on the provisions to be included in an insurer's custodian agreement.

Question 7. MAS seeks comments on the proposed provisions that insurers should include in their custodian agreement, and whether they could be set as mandatory provisions.

Question 8. MAS seeks comments on whether there are specific situations where these provisions cannot be included.

Question 9. MAS seeks suggestions on whether there are other provisions that insurers should include in their custodian agreement to ensure safe custody of insurance fund assets.

4 Information Collected on Custodian Arrangements

4.1 Currently, insurers are required to report on the assets held in custody under MAS 105, and other asset and liability information under MAS 122. MAS proposes to combine the reporting requirements into one single submission template under MAS 122.

4.2 To allow both MAS and insurers to better monitor insurers' exposures to various custodian arrangements, MAS also proposes the following amendments for the submission template:

- (a) Include information on all local and overseas custodians appointed by the insurer;
- (b) Include information on all sub-custodians appointed by the custodians;
- (c) Remove the requirement to report the book value of assets; and
- (d) Simplify the requirement from having to report the detailed address of the custodians and owners (as shown in the asset title), to reporting just the

country that the custodians, sub-custodians, and owners (as shown in the asset title) are located in.

4.3 In the review of the information submission template, MAS considered two options:

(a) Option 1 – Report aggregated information by asset class held with each custodian

Currently, granular asset information is already collected under MAS 122. In order to reduce duplication of the reporting requirements, MAS is open to receiving aggregate information by asset class (or types of assets) held with each custodian. Please see proposed information collection template in **Annex 3**. Under this proposal, insurers are still expected to maintain the list of custodian and sub-custodian information for each individual asset, to facilitate monitoring and ease of asset recovery during a disruption or cessation of business by custodians (as mentioned in paragraph 2.4(d)).

(b) Option 2 – Report information on individual asset held with each custodian

While the aggregated information proposed in Option 1 is sufficient for MAS' supervisory purposes, MAS understands that some insurers may have the breakdown of custodian information by individual assets readily available. In this case, it could cut down the administrative burden for insurers to report the information by individual asset rather than having to aggregate the information separately. Please see proposed information collection template in **Annex 4**. Similarly, under this proposal, insurers are still expected to update the list of custodian and sub-custodian information on a regular basis or when they are aware of any material changes.

4.4 While MAS is open to both options, the preference is to adopt a single approach to facilitate MAS' collation of information. Therefore, insurers are encouraged to indicate their preference as part of the consultation.

Question 10. MAS seeks comments on the proposal to collect information on all appointed custodians and sub-custodians (i.e. both local and overseas) under MAS 122.

Question 11. MAS seeks comments on the proposed amendments to the submission template as shown in paragraph 4.2.

Question 12. MAS seeks comments on the preferred method of reporting custodian information (i.e. Option 1 to report aggregated custodian information by

types of assets or Option 2 to report custodian information by individual asset).

5 Appointment of Fund Manager

5.1 MAS 105 currently requires insurers to notify MAS before the appointment of any person to act as its fund manager or the revocation of such appointment. MAS proposes to remove the notification requirement for appointment of fund manager from MAS 105 as such appointments would already be subject to requirements under MAS' Guidelines on Outsourcing.

6 Applicability of MAS 105

6.1 Currently, the reporting requirements under MAS 105 are applicable to captives and marine mutual insurers while the reporting requirements under MAS 122 are not applicable to this group of insurers. To align the reporting requirements, MAS proposes not to subject captives and marine mutual insurers to all reporting requirements under MAS 122, including the reporting requirement on custodian information.

Question 13. MAS seeks comments on the proposed scope of the reporting requirements, in particular, whether captives and marine mutual insurers should be required to report custodian information. If yes, please explain.

7 Implementation and Transitional Arrangements

7.1 In line with the current MAS 122 submission timeline for annual returns, MAS proposes that insurers submit the custodian information based on the revised template, within three months of the last day of each accounting period ending 31 December, starting from the accounting period ending 31 December 2017. MAS proposes to allow for a transitional period of one year from the date of the revised Notice for insurers to effect the other necessary changes.

Question 14. MAS seeks comments on the proposed implementation timeline to begin the submission of custodian information, based on the revised template, from 31 December 2017.

Question 15. MAS seeks comments on whether the transitional period of one year is necessary and sufficient.

Annex 1

MANDATORY REQUIREMENT AND GUIDELINES
FOR THE APPOINTMENT AND ONGOING MONITORING OF CUSTODIANS AND SUB-CUSTODIANS

Appointment and Ongoing Monitoring of Custodians and Sub-custodians		Existing/New
	<i>Mandatory requirement</i>	
1	An insurer should ensure that the custodian and its sub-custodian (if any) are licensed, registered, or authorised to act as custodians in the jurisdiction where the custody account is maintained.	New
	<i>Guidelines</i>	
2	An insurer should consider the custodian's practices, procedures, internal controls, financial strength, general reputation and standing prior to appointment. A custodian should have financial strength rating of at least investment grade by a reputable credit rating agency). Where the candidate does not meet the financial strength benchmark, the insurer should exercise added care and prudence in assessing the quality of the candidate to ensure safe custody of its assets.	Existing
3	Before appointing any custodian, an insurer should consider the custodian's business continuity plans with the insurer's own contingency arrangements for asset recovery, in the event of disruption or cessation of the custodian's operations.	New
4	An insurer should reassess the custodian on a regular basis or when it is aware of any material change, to ensure that the internal controls for safeguarding the insurer's assets are adequate and effective.	New
5	If an insurer's custodian has appointed sub-custodians to safeguard the insurer's assets, the insurer should ensure that the custodian's process of selecting, monitoring and reviewing its sub-custodians remain effective and satisfactory throughout the duration of appointment.	New
6	An insurer should maintain a complete list of all its custodians and sub-custodians appointed to safeguard the insurer's assets, and update the list for any subsequent appointment or removal. The list should include a breakdown of the amount of individual asset held by each custodian and sub-custodian for each insurance fund, and should be updated on a regular basis or when there is a material change.	New

Annex 2

MANDATORY REQUIREMENTS AND GUIDELINES
ON THE PROVISIONS TO BE INCLUDED IN A CUSTODIAN AGREEMENT

Provisions to be Included in a Custodian Agreement		
	<i>Mandatory requirements</i>	
1	The title of the custodian account should be maintained in the name of the insurer licensed in Singapore, and the custodian and sub-custodian should identify the assets as belonging to the respective insurance fund established by the insurer under section 17(1) of the Insurance Act, either through sub-accounts or otherwise.	New
2	The insurer's assets should be kept separate from any other assets belonging to the custodian, sub-custodian or other clients of the custodian and sub-custodian.	New
3	The circumstances in which the custodian or sub-custodian may withdraw assets from the account should be limited and clearly specified. Further, the custodian or sub-custodian should be prohibited from taking a charge, mortgage, lien or other encumbrance over, or in relation to, assets of the insurer, unless otherwise agreed upon in writing.	New
4	The extent of the custodian's liability in the event of any loss of assets maintained with the custodian caused by fraud, wilful default or negligence on the part of the custodian, its sub-custodians or its agents.	New
5	Any material or systemic breach of the agreement should be brought to the insurer's attention as soon as possible.	New
	<i>Guidelines</i>	
6	In the event that an insurer suffers a loss due to acts or omissions that the custodian is liable for, or for which the custodian accepts liability, the right of the insurer to recover from the custodian is not dependent upon the right of the custodian to recover against any of its sub-custodians or its agents.	New
7	Prior to placing an insurer's assets with a sub-custodian, the custodian will provide the insurer with a written notice of the identity of the sub-custodian with which the assets of the insurer are intended to be placed.	New

Annex 3

**SUBMISSION TEMPLATE FOR REPORTING AGGREGATED INFORMATION BY
ASSET CLASS HELD WITH EACH CUSTODIAN**

The proposed submission template can be found [here](#).

Annex 4

**SUBMISSION TEMPLATE FOR REPORTING INFORMATION ON INDIVIDUAL
ASSET HELD WITH EACH CUSTODIAN**

The proposed submission template can be found [here](#).

